

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

BRACE KERN & JESSICA HUIGENS, individually and  
as the representatives of a class of similarly situated  
persons,

CASE NO. 1:16-CV-00008

Plaintiffs,

HON. ROBERT HOLMES BELL

v.

USA TRAVEL SERVICES, et al.,

Defendants.

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**DEFENDANTS SILVER LAKE RESORT, LTD D/B/A SILVER LAKE RESORT AND  
SILVER LAKE RESORT OWNERS ASSOCIATION, INC.'S MOTION TO DISMISS OR  
TRANSFER**

NOW COME Defendants, Silver Lake Resort, LTD d/b/a Silver Lake Resort, and Silver Lake Resort Owners Association, Inc., by and through their attorneys, Smith Haughey Rice & Roegge, and in support of their Motion to Dismiss or Transfer filed pursuant to Fed. R. Civ. P. 12(b)(2), 12(b)(3), and 28 USC 1404(a), state the following:

1. On or about May 5, 2016, Plaintiffs Brace Kern and Jessica Huigens filed their Amended Complaint. There are over sixty defendants named in the pleading, including the

movants here, Silver Lake Resort, LTD d/b/a Silver Lake Resort and Silver Lake Resort Owners Association, Inc. (together the “Silver Lake Defendants”). Plaintiff’s complaint alleges violations of the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227, *et seq.* See Amended Complaint (Doc. No. 23).

2. Plaintiffs’ Amended Complaint alleges that fifty-eight of the sixty-two defendants, including the Silver Lake Defendants, are residents of, or are organized under the laws of the State of Florida. The remaining four defendants are alleged to be residents of the Dominican Republic (1), Jamaica (2), and Mexico (1). No defendants are alleged to be residents of the State of Michigan, and Plaintiffs’ complaint fails to allege the minimum contacts necessary for jurisdiction to apply. Therefore, Plaintiffs’ complaint must be dismissed pursuant to Fed. R. Civ. P. 12(b)(2) because (i) Michigan does not have jurisdiction over the Silver Lake Defendants under either MCL 600.711, 600.715, 600.721, or MCL 600.725, and/or because (ii) Plaintiffs cannot establish the necessary “minimum contacts” between the Silver Lake Defendants and Michigan to withstand scrutiny under the Due Process Clause analysis which controls.

3. In the alternative, even if this Court has personal jurisdiction over the Silver Lake Defendants, venue in this district is inconvenient. The case should be dismissed pursuant to Fed. R. Civ. P. 12(b)(3), or transferred to the United States District Court of Florida pursuant to 28 U.S.C. § 1404(a).

4. Pursuant to Local Rule 7.1(d), Counsel for the Silver Lake Defendants attempted to obtain concurrence to this motion. On May 23, 2016, the Undersigned Counsel for Defendants spoke to Counsel for Plaintiffs by telephone. Counsel advised that Plaintiffs oppose this motion.

5. The Motion will be based on this Motion, Defendants' Brief in Support of the Motion, all of the other papers on file in this action, and such other and further evidence or argument as the Court may allow.

WHEREFORE, Defendants Silver Lake Resort, LTD d/b/a Silver Lake Resort and Silver Lake Resort Owners Association, Inc., respectfully request that this Court grant this Motion and dismiss Plaintiffs' Amended Complaint or, in the alternative, transfer venue to a more convenient forum.

DATED: May 23, 2016

/s/ Christopher M. Spain  
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